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Nos. 1116-1117

In the Supreme Court of the United States

OCTOBER TERM, 1945

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

DR. LUCAS J. LEE AND HAZEL LEE

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

HAZEL LEE AND LUCAS J. LEE, AGENT, AND SUE LAKENAN, JUSTICE OF THE PEACE, COVINGTON, KY.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 1116

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

DR. LUCAS J. LEE AND HAZEL LEE

No. 1117

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

HAZEL LEE AND LUCAS J. LEE, AGENT, AND SUE LAKENAN, JUSTICE OF THE PEACE, COVINGTON, KY.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

Paul A. Porter, Administrator of the Office of Price Administration, petitioner herein, prays that writs of certiorari be issued to review the judgments of the United States Circuit Court of Appeals for the Sixth Circuit in the above entitled cases, entered on April 8, 1946, dismissing

as moot appeals from two decisions of the district court dismissing suits for injunctions.

OPINIONS BELOW

The opinion of the District Court in the first case (R. 20–23) has not yet been reported. It filed no opinion in the second case. The Circuit Court of Appeals wrote no opinion.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 8, 1946. The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

In order to forestall an eviction in violation of the Price Administrator's rent regulations and to prevent further violation of the regulations by respondents Lee, the Administrator sued in the United States District Court for injunctive relief. The District Court held that it lacked jurisdiction to interfere with the state court eviction proceeding. An appeal having been taken, the Circuit Court of Appeals denied the Administrator's application for a restraining order pending the appeal. The tenant was then forced to vacate the premises. At the time the appeals were argued respondents moved to have the appeals dismissed as moot, and the Circuit Court of Appeals granted the motion. The questions presented are:

1. Whether the court below erred in holding the case moot.

2. Whether the court below abused its discretion in denying the application for a temporary restraining order.

3. Whether the District Court erred in holding that it had no jurisdiction to enjoin the unlawful eviction by the state court.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App. Sec. 901, *et seq.*) as amended, and Rent Regulation for Housing, as amended (10 F. R. 3436), issued under that Act. The pertinent provisions are set forth in the Appendix, *infra*, pp. 17–31.

STATEMENT

These cases were joined on appeal pursuant to an order of the Sixth Circuit Court of Appeals, dated October 6, 1945, granting the petitioners' motion to consolidate the two appeals for briefing and argument. Throughout this petition, references to the Record in the first case, No. 10007 in the court below and No. 1116 here, will be shown as "R" and references to the record in the second case, No. 10079 below and No. 1117 here, will be shown as "2R".

Section 2 (d) of the Emergency Price Control Act authorizes the Administrator, whenever such

action is necessary or proper in order to effectuate the purposes of the Act, to "regulate or prohibit * * * speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in * * * rent increases * * * inconsistent with the purposes of this Act." Under the authority of this Section, the Administrator has, by Section 6 of the Rent Regulation for Housing, provided that so long as the tenant continues to pay the rent to which the landlord is entitled no tenant shall be removed or evicted (except on grounds none of which is or was present in this case) unless, on petition, the Administrator of the Office of Price Administration issues a certificate authorizing the eviction.[1] Violation of this regulation is forbidden by Sections 4 (a), and Section 205 empowers the Administrator to seek injunctive relief against such violation.

On or about June 15, 1942, Robert C. Beever rented an apartment from the respondent, Dr. Lucas Lee, for the sum of Forty-three dollars a month, payable in advance on the 18th day of each month (R. 67). On October 18, 1944, because the tenant's child was ill, his wife was un-

[1] The validity of this provision is not challenged, nor could it be attacked in this proceeding. *Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503.

able to pay the rent due on that day (R. 73). Mr. Beever was employed on a day shift and thus was unable to pay the rent in person (R. 68). However, on the following day, October 19, 1944, Mrs. Beever went to Dr. Lee's office to pay the rent (R. 51, 52). Dr. Lee was not in the office, but the janitor, who had on previous occasions accepted the rent (R. 45, 74) and who collected the rent when the respondent Lee was not in (R. 101), was present. The rent was tendered to the janitor, but he declined to accept it because he had no receipt book (R. 51, 73). On October 20, 1944, a notice to vacate was served on the tenant (R. 54). On the same day the tenant mailed a money order to respondent Lee for the amount of the rent (R. 62). However, this tender was refused, and the money order was returned by Lee's attorney (R. 56). In the past, Lee had accepted payments of rent one to six days after the due date without objection (R. 44, 62, 68, 74–75). This was also true with respect to other tenants of the respondents (R. 87, 92). No demand was made for the rent on October 18th (R. 57) and no receipt was tendered on the 18th or the 19th (R. 64). Shortly afterward Dr. Lee told the tenant that the real reason for the eviction was not the non-payment of rent but "the fact that he didn't want children in the apartment any longer", and that "that is the way it is going to be done". (R. 71; cf. R. 58–59).

On October 20, 1944, respondent Lee commenced an action in the Justice Court of Sue Lakenan to recover possession of the premises by reason of the alleged non-payment of rent due on October 18, 1944 (R. 18). The trial of this action was continued by the Justice of the Peace to December 4, 1944.

On the latter date the Administrator brought the first action herein (No. 10,007 in the court below) to enjoin the Lees from prosecuting eviction proceedings against "Beever or any other tenant" and to enjoin them from violating the Rent Regulations issued pursuant to the Emergency Price Control Act (R. 5). A temporary restraining order was issued by the United States District Court (R. 11), enjoining the Lees from prosecuting the eviction against Beever. The defendants thereafter moved to discharge the temporary restraining order and to dismiss the complaint (R. 15, 16). The motion was heard on oral testimony and documentary evidence (R. 29–108). After a trial, the restraining order was dissolved, an injunction was denied, and the complaint dismissed (R. 26). The District Court held that the state court had concurrent jurisdiction under the Price Control Act, and that the Federal court accordingly lacked jurisdiction to enjoin the state court proceeding (R. 20–26).

On the landlord's motion, the Forcible Detainer action in the first case was subsequently dismissed

without prejudice (2 R. 22). On June 25, 1945 the respondents, Hazel Lee and Lucas J. Lee, instituted another action in Forcible Detainer in the Court of Justice of the Peace Sue Lakenan, asking for a writ of restitution to remove R. C. Beever and his family from his apartment on the ground of non-payment of rent since October 18, 1944 (2 R. 14). In fact, the tenant had paid the rent each month on the due date to his attorney, who retained it in escrow pursuant to an agreement with the attorney for the respondent (R. 77). On July 2, 1945, the Justice of the Peace entered a judgment in favor of Hazel Lee and Lucas J. Lee directing the eviction of the tenant Beever (2 R. 15). On July 9, 1945, the Administrator instituted the second action in the United States District Court (No. 10,079 below) in which he sought to restrain the enforcement and execution of this judgment by the respondents Hazel Lee and Dr. Lucas J. Lee and by any constable working out of Sue Lakenan's court (2 R. 6). Respondents' motion to dismiss the complaint of the Administrator was granted on the ground that the court lacked jurisdiction to enjoin the action in the state court (2 R. 28–30).

An appeal was duly taken in each action (R. 27; 2R. 32). Application was made to the Circuit Court of Appeals for an injunction pending appeal in the first case, but was denied (R. 110-111).

On July 14, 1945 the tenant was served with a writ of possession upon which the Justice of the

Peace had written that he must vacate within ten days.[2] The tenant, finding that he had no choice in the matter, to keep his furniture from being put on the street, moved it to a friend's basement. He and his family went to live with his wife's parents at Covington, Kentucky for six weeks, and then they moved to his parents' home in Michigan where they lived in the basement for five months until he found accommodations to house his family. He stated that at no time was he willing to move out of the premises but did so only because he knew that if he did not he would be put out.

At the argument of the appeals, an affidavit was submitted by the landlord setting forth that the premises had been vacated (R. 114), and the Circuit Court of Appeals, on the respondents' motion, dismissed both actions on the ground that they were now moot because the tenant was no longer on the premises. (R. 117)

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals for the Sixth Circuit erred in dismissing the appeals from the denials of the injunctions on the ground that the cases had become moot because the tenant had vacated the premises pursuant to the order of the Justice of the Peace.

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[2] The facts appearing in this paragraph are set forth in the affidavit of R. C. Beever submitted by the petitioner to the Circuit Court of Appeals in opposition to respondents' motion to have the cause dismissed as moot (R. 112-115).

2. The Circuit Court of Appeals erred in denying a temporary injunction against the eviction pending appeal.

3. The Circuit Court of Appeals erred in not holding that the District Court possessed jurisdiction to enjoin the eviction proceedings in the state courts.

4. The Circuit Court of Appeals erred in not holding that the District Court should have entered the injunction prayed for by petitioner.

REASONS FOR GRANTING THE WRIT

1. The decision that the case is moot because the tenant has been evicted conflicts with *Henderson* v. *Fleckinger*, 136 F. 2d 381 (C. C. A. 5). In that case exactly the same situation existed as prevails here. The court there held (p. 381):

> On the argument of the appeal it was suggested that the tenant had now vacated the premises, and the cause is moot. The appellant contends that he is nevertheless entitled to an injunction and to have the status restored. We authorized affidavits to be filed as to the facts. The tenant says she moved out a few days after the injunction was denied [in the district court] to escape bodily eviction under the warrant from the State court. Appellee makes affidavit that the tenant moved voluntarily on Jan. 6, 1943, owing two months and six days rent which has not been paid. We are of opinion that if the tenant was forced out, and if an in-

> junction be finally granted, it would be within the power of the court granting it to order the status as of the time of filing the complaint to be restored. *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1, 2, 56 S. Ct. 654, 80 L. Ed. 1015, and cases cited. The cause is therefore not moot. * * *.

The decision below as to mootness was clearly wrong. As is pointed out in the *Fleckinger* case, the matter is not moot because the court can still grant relief to the tenant by reinstating him in the apartment. See *Jones* v. *S. E. C.*, 298 U. S. 1, 15–18; *Texas & N. O. R. Co.* v. *Northside Belt Ry. Co.*, 276 U. S. 475, 479. Moreover, inasmuch as the complaints in these cases prayed for injunctive relief against the eviction of "Beever or any other tenant" and against the commission or continuance of violations of the Rent Regulations, it is apparent that the departure of Beever did not render the cause moot any more than an injunction suit against a store based on sales at unlawful prices to one individual becomes moot when he ceases to patronize the store or dies. Cf. *Hecht Co.* v. *Bowles*, 321 U. S. 321, 327; *Federal Trade Commission* v. *Goodyear Tire & Rubber Co.*, 304 U. S. 257; *Walling* v. *Helmerich & Payne*, 323 U. S. 37, 43.

2. The holding in this case that the case becomes moot when the tenant has been evicted, together with the refusal of the court below to grant in-

junctions pending appeal to maintain the *status quo* in this type of case makes it impossible for the Administrator to protect the tenants in the Sixth Circuit. As is more fully developed in the petition in the *Dicken* case, filed herewith, the most crucial area for price control at present is in the field of rent. The shortage in housing is steadily growing greater and any break in the system of control would result in grave hardship for tenants illegally evicted, and an extreme pressure on the rent ceilings. If landlords can deprive tenants of all protection by evicting them before remedial action can be taken in the federal courts, which is the result of the holding of mootness here, they will be greatly encouraged to attempt unlawful evictions. This evil is exacerbated by the refusal of the court below to grant injunctions pending appeal, which inevitably means that the evictions will take place.

3. The Circuit Court of Appeals clearly abused its discretion in refusing to stay the eviction pending appeal. We recognize that an interlocutory ruling on an application for temporary injunction will not be disturbed by this Court unless plainly arbitrary. But here there was no reason at all why the restraining order should have been denied, and the policy of the court below in denying restraining orders in these circumstances in itself presents an important issue because of its effect in interfering with the enforcement of the

Rent Regulations at the present time. Clearly the harm to the tenant forced to move during the pendency of the appeal was very great. The benefit to the landlord, who merely desired to rent to someone else, presumably without children, was negligible or non-existent. From the broader viewpoint of law enforcement policy, it is vital that in a suit to prevent a violation of law, the law violator not be permitted to achieve his illegal end while the suit is still pending. And if it is proper for a court, in passing upon an application for temporary relief pending appeal, to give weight to the likelihood that the judgment appealed from will be reversed, we shall show below that the district court's decision that it lacked jurisdiction is in conflict with the decision of this Court in *Bowles* v. *Willingham*, 321 U. S. 503. In addition, our summary of the evidence in the Statement, *supra*, pp. 4–8, demonstrates that the respondents were not evicting Beever for not having paid his rent. In the absence of any possible reason for denying the Administrator temporary relief, the action of the court below in this respect was clearly an abuse of discretion, which, as we have seen, is aggravated by the decision that the eviction pending appeal renders the case moot.

This Court on certiorari may review the interlocutory as well as the final orders of the Circuit Court of Appeals. *Toledo Scale Co.* v. *Computing*

Scale Co., 261 U. S. 399, 418; *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U. S. 251, 258; *Panama R. R. Co.* v. *Napier Shipping Co.*, 166 U. S. 280, 284. In view of the number of instances in which the present problem may arise, particularly in the light of the existing housing shortage, it is important that this Court set the Circuit Court of Appeals straight with respect to the necessity of preventing evictions pending appeals.

4. The necessity for an immediate determination that the district courts have power to enjoin evictions in violation of O. P. A. Regulations compels us to request the Court, if it grants certiorari, to reach the merits of the jurisdictional issue, and not merely to hold that the case is not moot or that a temporary injunction should have been granted. To remand the case to the Circuit Court of Appeals for the purpose of deciding the jurisdictional question, with a possibility of further review here, would impair the effectiveness of the rent control program in the Sixth Circuit for many months in which the housing situation will be most critical.

The District Court in this case reasoned that Section 205 (e) gives the Federal and the State courts concurrent jurisdiction over all proceedings other than criminal, that, accordingly, the local magistrate's court has equal jurisdiction with it to determine the lawfulness of the eviction,

and that, accordingly, Section 205 (c) itself deprived the federal court of power to enjoin the previously instituted local proceeding. (R. 20–25). This decision completely disregards the many manifestations on the face of Section 205 that the concurrent jurisdiction granted was limited to *civil enforcement* suits under that Section, and that this Court expressly so declared in *Bowles* v. *Willingham*, 321 U. S. 503, 511–512. Clearly the suit by the Lees in the local court to evict Beever was neither a suit "under Section 205" as specifically required by the concurrent jurisdictional provision in Section 205 (e), nor an enforcement action at all. In the *Willingham* case this Court stated (p. 512):

> * * * Under the present Act all jurisdiction has not been withheld from state courts, since they have concurrent jurisdiction over all *civil enforcement* suits brought by the Administrator. § 205 (e). * * * [Italics supplied.]

The Court also declared (p. 511n):

> It is true that § 205 (e) gives to state and territorial courts concurrent jurisdiction of all proceedings (except criminal proceedings) under § 205 of the Act. But they embrace *only enforcement suits brought by the Administrator*, not suits brought to restrain or enjoin enforcement of the Act or orders or regulations thereunder. [Italics supplied.]

The text of Section 205 demonstrates that there can be no question that only enforcement actions are included within the "proceedings under Section 205" referred to in Section 205 (c). This appears clearly from the official title of the Section ("Enforcement"), from the fact that the Section provides only for various types of enforcement proceedings and for limitations upon such proceedings, and from the fact that Section 205 (c) itself declares that with certain exceptions "such other proceedings may be brought in any district in which any part of any act or transaction constituting *the violation* occurred." [Italics supplied.]

As this Court noted in the *Willingham* case (p. 510): "By § 205 (a) the Administrator is given authority to seek injunctive relief in the appropriate court (including the federal district courts) against acts or practices in violation of § 4 * * *" The attempt at eviction here was itself a violation of the Rent Regulations and therefore of § 4 of the Act. In conferring concurrent jurisdiction to enforce the Act upon state courts, Congress was clearly not intending to grant the state courts authority to proceed with unlawful eviction proceedings or to render such proceedings immune from the injunctive power of the federal court under Section 205 (a). The contrary has been held in numerous cases. It may be observed that although there have been a great many cases, including the

Willingham case and the *Fleckinger* case, *supra*, in which state court proceedings have been enjoined in which the objection raised by the district court here could have been presented, this is, so far as we know, the first case in which any such challenge to the federal court's power has been made or accepted.[3]

CONCLUSION

The court below decided a question of importance to the enforcement and administration of the Emergency Price Control Act. This decision conflicts with a decision of another Circuit Court of Appeals. It is clearly wrong. For these reasons a writ of certiorari should be granted.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement,
Office of Price Administration.

APRIL 1946.

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[3] Objections have been raised under Section 265 of the Judicial Code, a point which we discuss in our petition for certiorari in *Porter v. Dicken*, to be filed herewith.

APPENDIX

A. *The Statutes*

The pertinent provisions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 50 U. S. C. App., Secs. 901, *et seq.*, are Sections 2 (d), 4 (a), 4 (b) and 205.

SEC. 2. * * *

(d) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order

under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder.

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

(b) Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a

violation of section 4 (c) and for not more than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought.

(e) The district courts shall have jurisdiction of criminal proceedings for violations of section 4 of this Act, and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act. Such criminal proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred. Except as provided in section 205 (f) (2), such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found: *Provided, however, That all suits under subsection (e) of this section shall be brought in the district or county in which the defendant resides or has a place of business, an office, or an agent.*[1] Any such court shall advance on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed against the Administrator or the United

[1] Added by sec. 108 (a) of Stabilization Extension Act of 1944.

States Government in any proceeding under this Act.

(d) No person shall be held liable for damages or penalties in any Federal, State, or Territorial court, on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this Act or any regulation, order, price schedule, requirement, or agreement thereunder, or under any price schedule of the Administrator of the Office of Price Administration or of the Administrator of the Office of Price Administration and Civilian Supply, notwithstanding that subsequently such provision, regulation, order, price schedule, requirement, or agreement may be modified, rescinded, or determined to be invalid. In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder the court having jurisdiction of such suit or action shall certify such fact to the Administrator. The Administrator may intervene in any such suit or action.

(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, *within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the*

overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation.[2] For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; *and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price.*[3] If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer *either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for*

[2] As amended by sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "* * * bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court."

[3] Added by sec. 108 (b) of Stabilization Extension Act of 1944.

the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.[4] *[The amendment made by subsection (b), insofar as it relates to actions by buyers or actions which may be brought by the Administrator only after the buyer has failed to institute an action within thirty days from the occurrence of the violation, shall be applicable only with respect to violations occurring after the date of enactment of this Act. In other cases, such amendment shall be applicable with respect to proceedings pending on the date of enactment of this Act and with respect to proceedings instituted thereafter.]*[5]

(f) (1) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act and to assure compliance with and provide for the effective enforcement

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[4] As amended by sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "* * * is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act."

[5] Sec. 108 (c) of Stabilization Extension Act of 1944.

of any regulation or order issued or which may be issued under section 2, or of any price schedule effective in accordance with the provisions of section 206, he may by regulation or order issue to or require of any person or persons subject to any regulation or order issued under section 2, or subject to any such price schedule, a license as a condition of selling any commodity or commodities with respect to which such regulation, order, or price schedule is applicable. It shall not be necessary for the Administrator to issue a separate license for each commodity or for each regulation, order, or price schedule with respect to which a license is required. No such license shall contain any provision which could not be prescribed by regulation, order, or requirement under section 2 or section 202: *Provided*, That no such license may be required as a condition of selling or distributing (except as waste or scrap) newspapers, periodicals, books, or other printed or written material, or motion pictures, or as a condition of selling radio time: *Provided further*, That no license may be required of any farmer as a condition of selling any agricultural commodity produced by him, and no license may be required of any fisherman as a condition of selling any fishery commodity caught or taken by him: *Provided further*, That in any case in which such a license is required of any person, the Administrator shall not have power to deny to such person a license to sell any commodity or commodities, unless such person already has such a license to sell such commodity or commodities, or unless there is in effect under paragraph (2) of this subsection with respect to such person an order

of suspension of a previous license to the extent that such previous license authorized such person to sell such commodity or commodities.

(2) Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this subsection, or has violated any of the provisions of any regulation, order, or requirement under section 2 or section 202 (b), or any of the provisions of any price schedule effective in accordance with the provisions of section 206, which is applicable to such person, a warning notice shall be sent by registered mail to such person. If the Administrator has reason to believe that such person has again violated any of the provisions of such license, regulation, order, price schedule, or requirement after receipt of such warning notice, the Administrator may petition any State or Territorial court of competent jurisdiction, or a district court subject to the limitations hereinafter provided, for an order suspending the license of such person for any period of not more than twelve months. If any such court finds that such person has violated any of the provisions of such license, regulation, order, price schedule, or requirement after the receipt of the warning notice, such court shall issue an order suspending the license to the extent that it authorizes such person to sell the commodity or commodities in connection with which the violation occurred, or to the extent that it authorizes such person to sell any commodity or commodities with respect to which a regulation or order issued under section 2, or a price schedule effective in accordance with the provisions of section 206, is applicable;

but no such suspension shall be for a period of more than twelve months. For the purposes of this subsection, any such proceedings for the suspension of a license may be brought in a district court if the licensee is doing business in more than one State, or if his gross sales exceeded $100,000 per annum. Within thirty days after the entry of the judgment or order of any court either suspending a license, or dismissing or denying in whole or in part the Administrator's petition for suspension, an appeal may be taken from such judgment or order in like manner as an appeal may be taken in other cases from a judgment or order of a State, Territorial, or district court, as the case may be. Upon good cause shown, any such order of suspension may be stayed by the appropriate court or any judge thereof in accordance with the applicable practice; and upon written stipulation of the parties to the proceeding for suspension, approved by the trial court, any such order of suspension may be modified, and the license which has been suspended may be restored, upon such terms and conditions as such court shall find reasonable. Any such order of suspension shall be affirmed by the appropriate appellate court if, under the applicable rules of law, the evidence in the record supports a finding that there has been a violation of any provision of such license, regulation, order, price schedule, or requirement after receipt of such warning notice. No proceedings for suspension of a license, and no such suspension, shall confer any immunity from any other provision of this Act: *Provided, That no regulation, order, license, or requirement heretofor or hereafter issued or prescribed pursuant to sec-*

tion 2 (a) (2) of the Act of June 28, 1940, as amended by the Act of May 31, 1941, and by title III of the Second War Powers Act, 1942, may validly contain any requirement as to the observance of any regulation, order, license, or requirement issued or prescribed pursuant to this Act or the Stabilization Act of October 2, 1942.[6]

(g) The district courts shall have exclusive jurisdiction to enjoin or set aside, in whole or in part, orders for suspension of allocations, and orders denying a stay of such suspension, issued by the Administrator pursuant to section 2 (a) (2) of the Act of June 28, 1940, as amended by the Act of May 31, 1941, and title III of the Second War Powers Act, 1942, and under authority conferred upon him pursuant to section 201 (b) of this Act. Any action to enjoin or set aside such order shall be brought within five days after the service thereof. No suspension order shall take effect within five days after it is served, or, if an application for a stay is made to the Administrator within such five-day period, until the expiration of five days after service of an order denying the stay. No interlocutory relief shall be granted against the Administrator under this subsection unless the applicant for such relief shall consent, without prejudice, to the entry of an order enjoining him from violations of the regulation or order involved in the suspension proceedings.[7]

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[6] Added by sec. 108 (d) Stabilization Extension Act of 1944.

[7] Added by sec. 108 (e) of Stabilization Extension Act of 1944.

B. *The Regulations*

The pertinent provisions of the Rent Regulations for Housing (10 F. R. 3436, 13528) are as follows:

> SEC. 6. *Removal of tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, unless:
>
> (1) *Tenant's refusal to renew lease.* The tenant, who had a written lease or other written rental agreement, has refused upon demand of the landlord to execute a written extension or renewal thereof * * *
>
> (2) *Tenant's refusal of access to landlord.* The tenant has unreasonably refused the landlord access to the housing accommodations for the purpose of inspection or of showing the accommodations to a prospective purchaser, mortgagee, or prospective mortgagee, or other person having a legitimate interest therein: *Provided, however,* That such refusal shall not be ground for removal or eviction if such inspection or showing of the accommodations is contrary to the provisions of the tenant's lease or other rental agreement; or

(3) *Violating obligation of tenancy or committing nuisance.* The tenant (i) has violated a substantial obligation of his tenancy, other than an obligation to pay rent, and has continued, or failed to cure, such violation after written notice by the landlord that the violation cease, or (ii) is committing or permitting a nuisance or is using or permitting a use of the housing accommodations for an immoral or illegal purpose; * * *

* * * * *

(6) *Occupancy by landlord.* The landlord owned, or acquired an enforceable right to buy or the right to possession of, the housing accommodations prior to the effective date of regulation (or prior to October 29, 1942 where the effective date of regulation is prior to that date, or prior to November 6, 1942 for housing accommodations within the Hastings Defense-Rental Area), and has an immediate compelling necessity to recover possession of such accommodations for use and occupancy as a dwelling for himself, or has served during the period of the war emergency in the armed forces of the United States and in good faith seeks possession for his own occupancy. If a tenant has been removed or evicted under this paragraph (a) (6) from housing accommodations, the landlord shall file a written report on a form provided therefor before renting the accommodations or any part thereof during a period of six months after such removal or eviction.

(b) *Administrator's certificate* — (1) *Removals not inconsistent with act or regu-*

lation. No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the act or this regulation and would not be likely to result in the circumvention or evasion thereof. The certificate shall authorize the pursuit of local remedies at the expiration of six months after the date of filing of the petition unless the Area Rent Director has determined that a three months' period is adequate for the purposes of the act in the particular area in issuing certificates under section 6 (b) (2), in which event the applicable period shall be three months. Within the discretion of the Area Rent Director the certificate may authorize the pursuit of local remedies for the removal or eviction of the tenant at a time less than six or three months, as the case may be, after the date of the filing of the petition if the petitioner establishes that unusual hardship would otherwise result, or that a lesser period in the particular case is consistent with the purposes of the regulation and the act.

(2) *Occupancy by purchaser.* A certificate shall be issued authorizing the pursuit of local remedies to remove or evict a tenant of the vendor, for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after the effective date of regulation (or on or after October

20, 1942 where the effective date of regulation is prior to that date, or on or after November 6, 1942 for housing accommodations within the Hastings Defense-Rental Area), only as provided in this paragraph (b) (2).

(i) Where the Administrator finds that the payment or payments of principal made by the purchaser aggregate twenty percent or more of the purchase price, he shall, on petition of either the vendor or purchaser issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law. Except as herein provided and unless the Area Rent Director shall determine that a three months' period is adequate for the purposes of the act in the particular defense-rental area, the certificate shall authorize the pursuit of local remedies at the expiration of six months after the date of filing of the petition.

* * * * *

(d) *Notices required*—(1). *Notices prior to action to remove tenant.* Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant. A written copy of such notice shall be given to the area rent office within 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations by court process or otherwise, unless at least ten days (or, where the ground for removal or eviction is non-payment of rent, the period required by the local law for notice prior to the commencement of an action for removal

or eviction in such cases, but in no event less than three days) prior to the time specified for surrender of possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or eviction to the tenant and to the area rent office, stating the ground under this section upon which such removal or eviction is sought and specifying the time when the tenant is required to surrender possession: * * *

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